

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION**

United States of America, )  
                                )  
Plaintiff,                 )  
                                )  
vs.                         )  
                                )  
Lloyd Joseph Counts, III, )  
                               )  
Defendant.                 )

**ORDER DENYING DEFENDANT'S  
MOTION FOR EMERGENCY  
NON-MEDICAL ESCORTED TRIP**

Case No. 4:09-cr-052-01

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Before the Court is the Defendant's "Motion for Emergency Non-Medical Escorted Trip," filed on September 7, 2011. See Docket No. 89. The Government filed a response in opposition to the motion on September 7, 2011. See Docket No. 90. The Court denies the Defendant's motion for the reasons set forth below.

**I.       BACKGROUND**

The Defendant, Lloyd Joseph Counts, III, is currently incarcerated at FPC Yankton in Yankton, South Dakota. Counts's brother recently passed away. In his motion, Counts asks the Court to order the Bureau of Prisons ("BOP") to allow him to attend his brother's prayer service on September 9, 2011 and funeral on September 10, 2011, in Dunseith, North Dakota.

**II.      LEGAL DISCUSSION**

The BOP has authority to grant the temporary release of a prisoner under 18 U.S.C. § 3622 which provides as follows:

The Bureau of Prisons may release a prisoner from the place of his imprisonment for a limited period if such release appears to be consistent with the purpose for which the sentence was imposed and any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2), if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that a

prisoner will honor the trust to be imposed in him, by authorizing him, under prescribed conditions, to --

- (a) visit a designated place for a period not to exceed thirty days, and then return to the same or another facility, for the purpose of --

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- (2) attending a funeral of a relative[.]

18 U.S.C. § 3622. Awarding temporary release under 18 U.S.C. § 3622 is within the sole discretion of the BOP. United States v. Grass, 561 F. Supp. 2d 535, 536-37 (E. D. Pa. 2008); see also S. Rep. 98-225 at 116 (1983) (“As with subsection (a) [of 18 U.S.C. § 3622], temporary release under subsection (b) and (c) is within the discretion of the Bureau of Prisons; there is no absolute right to work release or other outside privileges.”). The Defendant is now in the custody of the BOP and falls within its jurisdiction and its rules and regulations. The decision to temporarily release an inmate is within the sole discretion of the BOP, not this Court.

### **III. CONCLUSION**

For the foregoing reasons, the Defendant’s “Motion for Emergency Non-Medical Escorted Trip,” (Docket No. 89) is **DENIED**.

**IT IS SO ORDERED.**

Dated this 9th day of September, 2011.

*/s/ Daniel L. Hovland*

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Daniel L. Hovland, District Judge  
United States District Court